

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

**Ameren Transmission Company of Illinois :**  
:  
**Petition for an Order pursuant to :** **15-0562**  
**Section 8-509 of the Public Utilities Act :**  
**Authorizing Use of Eminent Domain Power. :**

**PROPOSED ORDER**

By the Commission:

**I. INTRODUCTION**

On October 13, 2015, Ameren Transmission Company of Illinois ("ATXI") filed with the Illinois Commerce Commission ("Commission") a verified petition pursuant to Section 8-509 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., requesting authorization to use eminent domain to acquire rights-of-way across 27 parcels of land in the Quincy to Meredosia and Meredosia to Pawnee portions of the Commission-approved route for ATXI's transmission line construction project known as the Illinois Rivers Project ("IRP"). The Commission previously granted a Certificate of Public Convenience and Necessity ("Certificate") pursuant to Section 8-406.1 of the Act and authorized construction of the IRP under Section 8-503 of the Act in Docket No. 12-0598. Because the IRP was approved under Section 8-406.1 of the Act, Section 8-509 of the Act requires the Commission to enter an order in this matter within 45 days of the initiation of this docket.

Pursuant to due notice, a prehearing conference was held in this matter before a duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Springfield, Illinois on October 26, 2015. All landowners affected by ATXI's petition received notice of this proceeding. Carolyn Kaiser, Steven Kaiser, Stuart Kaiser and Betty J. Speckhart Revocable Trust ("Kaiser Intervenors"); as well as Thomas Hoffman ("Hoffman"), each own land along the transmission line route and filed petitions to intervene, which the ALJ granted. On October 29, 2015, a Petition to Intervene was filed by Stephen Schwartz, Robert Schwartz, Jeffrey Westerhold, Mary Westerhold, Dennis Ulrich, and William Schwartz (the "Westerhold Group"), which was granted on November 2, 2015. The evidentiary hearing was held on November 6, 2015, at which counsel representing ATXI, Commission Staff ("Staff"), and the intervenors each entered an appearance.

At the evidentiary hearing, ATXI offered the testimony of Rick Trelz, a Real Estate Manager for Ameren Services Company ("AMS")<sup>1</sup>, Jerry Murbarger, a Transmission Design Specialist in the Transmission Line Design group of AMS, and Amanda Sloan, a Project Manager for Contract Land Staff, LLC ("CLS"). Greg Rockrohr, a Senior Electrical Engineer in the Safety and Reliability Division in the Commission's Bureau of Public Utilities, provided testimony on behalf of Staff. Betty Speckhart and Stuart Kaiser each testified on their own behalf as a landowner. At the conclusion of the evidentiary hearing, the record was marked "Heard and Taken."

ATXI, Staff and Kaiser each submitted a Brief. The expedited schedule in this matter did not allow time for submission of responsive briefs. A Proposed Order was served on the parties.

On November 2, 2015, ATXI filed a "Notice of Withdrawal Without Prejudice," in which ATXI indicated that it had reached agreement with three landowners included in this Petition, therefore it was withdrawing its request for eminent domain authority in regards to Marilyn Schrodtt, the Linda E. Moss Trust and the Philip C. Moss Trust, and Gary and Patricia Surber. ATXI further indicated that it was moving to withdraw, without prejudice, its request for eminent domain authority over the Westerhold Group. On November 3, 2015, the Westerhold Group moved to withdraw its previously filed testimony due to ATXI's filing of the motion to withdraw.

Pursuant to Section 2-107 of the Act, the Commission must accept from Illinois residents comments on matters before the Commission through its website and toll-free telephone number. As of November 10, 2015, the Commission has not received any comments concerning this filing.

## **II. DESCRIPTION OF PETITIONER AND THE IRP**

ATXI was formerly known as Ameren Illinois Transmission Company. ATXI is an Illinois corporation with one employee, and is a wholly-owned subsidiary of Ameren Corporation. ATXI owns, operates, controls, and manages within Illinois certain transmission facilities for the furnishing or delivery of electricity, and is therefore a public utility within the meaning of Section 3-105 of the Act.

The IRP approved in Docket No. 12-0598 consists primarily of a new 345 kV transmission line spanning from the Mississippi River near Quincy, Illinois to the Indiana border near Terre Haute, Indiana. This primary portion of the project runs through parts of Adams, Brown, Christian, Clark, Coles, Edgar, Macon, Montgomery, Morgan, Moultrie, Pike, Sangamon, Scott, and Shelby Counties. Another significant portion of the project is a new 345 kV transmission line that runs from Ipava, Illinois to Meredosia, Illinois where it connects with the previously described transmission line. The Ipava to Meredosia segment runs through parts of Brown, Cass, Fulton, Morgan, and Schuyler Counties. The third significant segment of the project wraps around the west and south sides of

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<sup>1</sup> AMS is the service company subsidiary of Ameren Corporation. AMS provides various services to subsidiaries of Ameren Corporation, including ATXI.

Champaign in Champaign County. This 345 kV transmission line terminates at Rising, Illinois on one end and at Sidney, Illinois on the other end. This part of the project is not connected to any other part of the project. In Docket No. 12-0598, ATXI divided the IRP into nine segments: (1) Mississippi River-Quincy, (2) Quincy-Meredosia, (3) Meredosia-Ipava, (4) Meredosia-Pawnee, (5) Pawnee-Pana, (6) Pana-Mt. Zion, (7) Mt. Zion-Kansas, (8) Kansas-Indiana state line, and (9) Sidney-Rising. The municipality names represent the locations of substations.

Upon completion, the IRP will include approximately 375 miles of new 345 kV transmission lines, nine new or expanded substations, and six 345/138 kV transformers. The approved route requires a 150 feet wide right-of-way easement. The majority of the easement area will only have over-hanging wires. The construction of single shaft steel poles with no permanent "down guys" or anchors will reduce the amount of land removed from use. In addition, ATXI represents that it plans to place the structures near or adjacent to existing property lines or use lines (i.e. agricultural field lines). The project will be placed in service over several years, with the earliest in-service dates expected in 2016 and the final portion of the project to be placed in-service in 2019.

ATXI explains in its petition that it is seeking eminent domain authority on a segment-by-segment basis, or in some cases on a county-by-county basis within a particular segment. Because of the many parcels and landowners involved, and the varying in-service dates for the individual segments, ATXI believes that it is likely more expedient to file several Section 8-509 proceedings. Therefore, ATXI is evaluating the status of negotiations for individual segments and their relationship to the construction schedule for that segment. Based on this evaluation, ATXI has determined which segments or counties within the segments should be filed in individual cases. ATXI has determined that eminent domain must be sought in this filing for certain properties along the Quincy-Meredosia and Meredosia-Pawnee segment in Morgan, Scott, and Sangamon Counties.

Excluding the parcels over which ATXI no longer seeks eminent domain authority, ATXI now requests an order authorizing the use of eminent domain to acquire rights-of-way on 27 parcels owned by 21 landowners. ATXI states that, despite its efforts, it has been unable to obtain easements on the parcels (the "Unsigned Properties"). On October 13, 2015, ATXI filed maps and legal descriptions of the easements it sought as of that date.

### **III. STATUTORY AUTHORITY AND STANDARD OF REVIEW**

Section 8-509 of the Act provides in relevant part as follows:

When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-406.1, 8-503, or 12-218 of this Act, any public utility may enter upon, take or

damage private property in the manner provided for by the law of eminent domain.<sup>2</sup>

Section 8-509 contemplates that the builder of, in this case, an electric transmission line must have authority under either Section 8-406.1 or 8-503 if the power to take property by eminent domain is to be granted. ATXI received such authority in Docket No. 12-0598.

The Commission has found that under Section 8-509, prior to authorizing a utility to request eminent domain authority in circuit court, a utility must show that it made a reasonable attempt to acquire the property at issue. (See March 11, 2009 Order in Docket No. 06-0706 at 88) This involves an evaluation of whether a utility made a reasonable effort to negotiate for the easements it needs to construct the authorized utility facilities. In previous proceedings, the Commission has relied upon five criteria: (1) the number and extent of contacts with the landowners, (2) whether the utility has explained its offer of compensation, (3) whether the offers of compensation are comparable to offers made to similarly situated landowners, (4) whether the utility has made an effort to address landowner concerns, and (5) whether further negotiations will likely prove fruitful.

#### **IV. PARTIES' POSITIONS**

##### **A. ATXI Position**

In support of its request for eminent domain authority, ATXI observes only the Kaiser Intervenors contest ATXI's need for eminent domain authority. ATXI indicates that a common reason landowners give for not agreeing to sell ATXI an easement is the amount of money ATXI has offered to pay for each easement. ATXI notes, however, that the value of the limited easement rights that ATXI needs in the Unsigned Properties is outside the scope of this proceeding. ATXI trusts that the Commission will remain consistent with its earlier conclusions and make no determination regarding the amount of the compensation offers. ATXI discusses separately each of the five criteria that the Commission has previously used to evaluate the reasonableness of negotiations with landowners.

##### **1. Contact with Landowners**

ATXI states that it began its efforts to contact landowners and acquire the necessary easement in September of 2013 for the Quincy to Meredosia segment. For the Meredosia-Pawnee segment, ATXI states that it first began, or in some cases restarted, contacting the owners of the Unsigned Properties in March 2014. Specifically, ATXI sent by certified mail, return receipt requested, to the persons identified as the current owners of the Unsigned Properties in the records of the pertinent county Tax Collectors, a letter and "Statement of Information from the Illinois Commerce Commission Concerning Acquisition of Rights-of-Way by Illinois Utilities" consistent with 83 Illinois Administrative Code 300, "Guidelines for Land and Right-of-Way Acquisitions."

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<sup>2</sup> For the "law of eminent domain," see Section 8-509.5 of the Act and the Eminent Domain Act, 735 ILCS 30/1-1-1 et seq.

Supplemental mailings occurred when changes in property ownership were discovered. ATXI reports that it did not initiate contact with landowners who received these documents until at least fourteen days subsequent to the mailing.

Two weeks after the mailings, ATXI began contacting the owners of the Unsigned Properties directly. ATXI, through its professional land agents, contacted, in person if possible, the landowners to discuss the purpose of the IRP and the reason for the contact. At this time, ATXI also provided landowners with a written statement of the IRP's purpose, a small-scale map, and a property-specific option exhibit (sketch), as well as information regarding the type and location of the proposed facilities. (See, for example, ATXI Ex. 2.3 Part A, page 5 (signed agent checklist verifying agent discussed and provided landowner certain information, including the approximate location of poles); see also ATXI Ex. 1.2 (sample landowner packet).

During this second contact, ATXI also offered compensation for the easements it needs to acquire to construct the IRP. ATXI relates that the offers were based on an independent third-party appraiser's determination of the market value of each property. ATXI states that it explained this to each landowner, and provided each with a property calculation worksheet, based upon the appraisers' opinion and including compensation for other items, such as crop damage, where applicable. ATXI claims to have also provided to each landowner, when completed, the appraisal of his or her property, which included the valuation of the easement (as determined by comparing the value of the entire property before and after the easement) and determination of any diminution of value to the remaining property, if pertinent. Additionally, ATXI explained to the landowners the dimensions of the easement it sought and the proposed easement document. Finally, ATXI indicates that it ensured landowners that its representatives were available for discussion and negotiations as required and/or requested by each landowner.

Thereafter, ATXI reports that it contacted or attempted to contact—by letter, e-mail, telephone, or in person—each owner of the Unsigned Properties at least 12 times. ATXI relies on ATXI Exs. 1.0 (page 7), 2.1 (contact log providing number and type of contact for each Unsigned Property), 2.2 (Confidential) (detailing offers and counteroffers made), and 2.3 (describing ATXI's discussions and negotiations with each landowner) as evidence of the extent of the negotiations with the owners of the Unsigned Properties.

ATXI maintains that these efforts to contact landowners are similar to those the Commission consistently finds reasonable. ATXI notes that the Commission recently granted ATXI eminent domain authority where ATXI contacted landowners at least seven times and developed its compensation offers using a methodology virtually identical to the one used in this proceeding; and cites the following dockets in support of this position: Docket No. 15-0065, March 11, 2015 Order (granting utility eminent domain authority where it contacted landowners at least 20 times); Docket No. 14-0380, June 26, 2014 Order (granting utility eminent domain authority where it contacted landowners at least 11 times); Docket No. 14-0291, May 20, 2014 Order (granting utility eminent domain authority where it contacted landowners at least seven times); Docket No. 13-0456, September 10, 2013 Order (granting utility eminent domain authority where it contacted

landowners at least 15 times); Docket No. 13-0516, October 23, 2013 Order (granting utility eminent domain authority where it contacted landowners at least 11 times); and Docket No. 11-0469, December 13, 2011 Order (granting utility eminent domain authority where it contacted landowners at least 11 times).

## **2. Explanation of Compensation Offer**

ATXI contends that it has explained, in detail, the basis for its offers of compensation to each owner of the Unsigned Properties. ATXI reports that it provided each landowner and/or their attorney with a detailed calculation sheet stating the total market value of their land, the easement acreage, the percentage of market value at which ATXI believed the easement should be valued, and ATXI's compensation offer itself. ATXI also explained to the landowners that its initial offer was based on an independent, third-party appraiser's determination of the market value of their property.

ATXI states further that it explained how it plans to address any construction damages to property. Specifically, ATXI told landowners that it is responsible for the restoration of, or payment of damages for, their property, and that it would notify each landowner before construction commenced. For agricultural property, ATXI offered the landowners, at their option, prepaid damages for anticipated crop loss, on a graduated basis, spread over a five-year period. ATXI also offered prepayment for anticipated general property damages, such as compaction and deep ripping, and restoration, such as fertilizer, rutting, and reseeding. If a landowner did not accept prepayment, ATXI explained that it would individually assess their property for damage at the end of the construction phase. Finally, ATXI explained, it would assign an ATXI representative to be available to each landowner for the purpose of reporting any construction damage.

## **3. Reasonableness of Compensation Offers**

ATXI states that it intends to fairly compensate landowners for the impact of the IRP on their property so that, after the IRP is constructed, there is no impact to the property that results in a diminution in value beyond that reflected in the compensation that ATXI paid. Therefore, ATXI explains that it offered compensation intended to make landowners whole by fully compensating for any impact on the market value of their property caused by imposition of the easement and the presence of the transmission line.

### **a. Initial Compensation Offers Compared to the Appraised Market Value**

ATXI is only seeking easements across the Unsigned Properties and is not interested in acquiring the land in fee. The landowners will retain all remaining property rights apart from ATXI's easement rights. ATXI initially offered all of the Unsigned Properties' landowners 90% of the fee value of the easement area. When combined with a signing bonus, ATXI's initial offers amounted to the full fee value of the easement acreage. ATXI offered additional damages related to crops or construction, as outlined above.

### **b. Methodology behind Compensation Offers**

ATXI states that it developed its offers of compensation based on a methodology designed to be consistent for all landowners and to produce comparable offers for similarly situated landowners. ATXI notes that it retained licensed appraisal firms to prepare an appraisal report for each property over which ATXI needed easement rights. The appraisals determined the total market value of each property, if purchased in fee, based on the current highest and best use of the property. Factors included in the evaluation include but are not limited to (1) the size, shape, zoning, and other physical characteristics of the subject property; (2) the location of the proposed easement; (3) the impact of the easement on the subsurface, surface, and air rights estates of the property; and (4) the potential impact the easement may have on the market value and utilization of the property. The appraisers then determined the effect on the market value of the property caused by imposition of the transmission line easement, including whether any property outside of the easement strip would suffer diminution in value. From this the value of the easement was derived as the difference between the market value of the property with and without the easement. ATXI states that typically this value was significantly less than the fee value of the easement acreage. In an effort to negotiate in good faith, however, ATXI's initial offers to all landowners along any segment was 90% of the appraised fee value of the easement area.

ATXI's initial offers also included compensation for other factors: crop damages equal to three years of crop loss for the entire easement area, plus any additional non-crop land damages. ATXI's compensation offers also considered drainage tile damage. ATXI relates that it and the Illinois Department of Agriculture ("IDA") have agreed on a method for identifying and repairing damaged tile, and, on November 8, 2012, entered into an Agricultural Impact Mitigation Agreement ("AIMA") reflecting their agreement related to drainage tile as well as a broad range of agricultural concerns. ATXI also offered each landowner a 10% signing bonus.

### **c. Similarity to Prior Approved Methodologies**

ATXI's offers made to the owners of the Unsigned Properties were developed using a methodology virtually identical to the one used to develop offers to landowners in other dockets under Section 8-509 concerning the IRP. ATXI references Docket Nos. 14-0291, 14-0380, and 14-0438. ATXI adds that this is also consistent with the Commission's practice of granting eminent domain authority to other utilities using the same or a similar methodology to determine offers to acquire land rights for electric transmission lines.

#### **4. Responsiveness to Landowner Concerns**

ATXI also addressed landowner concerns unrelated to compensation. Some of those concerns related to specific changes landowners proposed to the language of the easement conveyance document, while others related to the location of the transmission line or the poles. ATXI states that it considered each proposed change individually. Where it could incorporate the changes without compromising the easement rights it needs for the IRP, ATXI indicates that it agreed to revise the easement document. Some proposed changes to the document, however, would impose restrictions or otherwise unreasonably limit the usefulness or intent of the easement. ATXI did not accommodate those requested changes. ATXI Ex. 2.3 reflects changes that ATXI made to the easement language to address landowner concerns.

#### **5. Usefulness of Further Negotiations**

ATXI asserts that it has made reasonable attempts to acquire the Unsigned Properties over a period of twelve months, and in some cases approximately two year, and will continue to seek negotiated resolutions, however ATXI indicates it does not expect further negotiations to be successful. Given the status of negotiations and the construction schedule, ATXI concludes that the necessary rights to the Unsigned Properties can not be obtained in a timely manner through negotiation.

ATXI has no indication that further negotiations with Mr. Kaiser and Ms. Speckhart will be successful. Instead, they have completely refused to negotiate with ATXI on any topic and therefore further negotiations are not expected to be successful.

If the Commission grants the relief requested here, ATXI points out that it will next be required to seek an order authorizing condemnation from the circuit court before it can proceed with construction on the Unsigned Properties. Absent settlement, that process can take up to a year, and this time frame must be considered in relation to the in-service date of the segment at issue. In ATXI's opinion, the fact that negotiations have not been successful to date, and the possibility of eminent domain proceedings taking a year, mean ATXI must proceed to eminent domain now.

#### **6. Issues Regarding the Kaiser and Speckhart Properties**

ATXI notes that Kaiser and Speckhart oppose eminent domain on the grounds that it is premature because their appeal is pending, and there is the possibility that some other route might be approved in Docket No. 15-0278. ATXI suggests the only question for the Commission here is whether ATXI has made reasonable attempts to acquire properties necessary for construction of a route authorized under Section 8-406.1 of the Act. For Kaiser and Speckhart, ATXI has, to the extent attempts have been possible given their unwillingness to negotiate.

ATXI notes that Staff has challenged whether ATXI needs easements for the Speckhart and Kaiser parcels, noting that ATXI's need for easements for these three parcels won't be established until a final order is issued in Docket No. 15-0278 to



determine transmission line routing. Similarly, Ms. Speckhart and Mr. Kaiser argue that ATXI's efforts to negotiate are premature because they have a pending petition at the Illinois Supreme Court challenging the IRP routing resulting from Docket No. 12-0598, as well as the fact that a different route could be approved in Docket No. 15-0278.

ATXI asserts that neither its efforts to negotiate nor its request for eminent domain authority is premature; the need for easements across these parcels was established when the IRP route was approved in Docket No. 12-0598. ATXI notes that the Act states that a utility may take private land when necessary for the construction of a route that has been authorized under Section 8-406.1 of the Act, and currently, ATXI has a valid certificate issued under Section 8-406.1 of the Act. ATXI states that this certificate has been affirmed on appeal, and the approved routing requires the IRP to cross the private property of Mr. Kaiser and Ms. Speckhart. Therefore, ATXI is appropriately seeking to implement the underlying certificate and its statutory rights.

ATXI acknowledges that Mr. Kaiser and Ms. Speckhart are hypothetically correct in indicating that a different route may be authorized in the future, either through an appeal and subsequent remand from the Illinois Supreme Court or the Commission's adoption of Staff's proposed route in a separate proceeding, while Staff is also correct that the Commission's final Order in Docket No. 15-0278 may mean that ATXI does not need the specific easements identified. Recognizing this, ATXI has agreed to withdraw its request for eminent domain authority over the Kaiser and Speckhart properties if the Staff "Blue Route" is approved in Docket No. 15-0278.

Nevertheless, ATXI suggests it is legally entitled to pursue land rights to construct a certificated route, and has made what reasonable attempts to negotiate it could. ATXI avers however, that Kaiser and Speckhart have refused to negotiate at all; in fact, they not even engaged in negotiations for those aspects that are not route-dependent, such as per acre valuation. ATXI believes it has consistently over the course of approximately two years negotiated, or attempted to negotiate, for the easement rights it needs pursuant to the approved IRP.

ATXI states it has continued to seek land rights over parcels such as Kaiser's and Speckhart's that ATXI does not expect to be affected by Docket No. 15-0278, while for the parcels located within the Docket No. 15-0278 Project Area, which include most of the 24 parcels Mr. Rockrohr identified in his direct testimony, ATXI ceased negotiations, because it could not build the transmission line on these parcels.

ATXI notes that the Proposed Order in Docket No. 15-0278 specifically endorsed this methodology for selection of the Project Area and found that ATXI's easement acquisition efforts outside that Project Area selection, referred to as "sunk costs" were prudently incurred. ATXI suggests this approach is consistent with the method that was approved in Docket No. 15-0269, where a re-route of the IRP from Pana to Mt. Zion had to be considered due to a parcel owned by the Macon County Conservation District, for which ATXI could not obtain rights to cross, nor condemnation authority over.

As in Docket No. 15-0269, ATXI has encountered an obstacle that requires a revised route, this time the FAA facilities along the Quincy to Meredosia line segment. ATXI notes that the route around this obstacle is being addressed in a separate docket, Docket No. 15-0278, and ATXI submits that there exists a possibility that a different route may be approved that does not require the easements ATXI seeks in this proceeding. As in prior proceedings, ATXI asserts that the Commission should find that even though the Commission's final order is pending in Docket No. 15-0278, eminent domain requests should be allowed to proceed in this docket.

ATXI notes that the Quincy to Meredosia line segment has a 2016 in-service date, and believes further delay may jeopardize meeting that schedule. ATXI acknowledges that it will require 13 additional easements along the route it proposed in Docket 15-0278, and that ATXI's route included landowner input and was universally supported by the landowner-intervenors in that case. Therefore, ATXI anticipates reaching voluntary agreement with many of these landowners in a timely manner. Conversely, Mr. Kaiser and Mrs. Speckhart have challenged the routing at every level of the appellate process and refused to engage in negotiations with ATXI. ATXI does not expect that the Kaiser and Speckhart landowners will commence negotiations even after Docket No. 15-0278 proceeding concludes.

ATXI avers that the reasons cited by Kaiser and Speckhart for waiting to begin negotiations are now based on speculative outcomes, noting that they lost their appeal in the Fourth District Court of Appeals, while the Supreme Court is under no obligation to hear a further appeal. ATXI therefore requests that the Commission approve eminent domain authority for each of the parcels involved in this proceeding.

## **B. Staff Position**

Staff notes that ATXI is currently seeking eminent domain authority for 18 parcels, having withdrawn its request in regard to 9 of the parcels contained in the Petition. Staff states that it does not oppose a grant of eminent domain authority for 15 of the 18 tracts for which ATXI still seeks authority, however Staff recommends that the Commission withhold eminent domain authority for the following three tracts in Adams County, as identified in Attachment A to ATXI's petition: ILRP\_QM\_AD\_003; ILRP\_QM\_AD\_033; and ILRP\_QM\_AD\_010.

Staff recognizes that the Commission has previously identified and relied upon five criteria to evaluate whether the granting of eminent domain is appropriate: (1) the number and extent of the utility's contacts with the landowners; (2) whether the utility has explained its offers of compensation; (3) whether the utility's offers of compensation to affected landowners are comparable to offers made to similarly situated landowners; (4) whether the utility has made an effort to address landowner concerns; and (5) whether further negotiations will likely prove fruitful. Staff does not believe ATXI has satisfied the last criteria in that it is not evident that further negotiations would not be useful with regard to the three identified properties that lie in Adams County.

Staff's primary concern is that ATXI's need for easements across the three parcels in Adams County, will not be established until the Commission issues a final order in Docket No. 15-0278 to determine transmission line routing. In its petition in Docket No. 15-0278, ATXI informed the Commission that ATXI cannot construct its transmission line using the route that the Commission approved in Docket No. 12-0598, because that route would locate ATXI's transmission poles too close to a pre-existing co-located VHF omnidirectional range beacon and a tactical air navigation system beacon ("VORTAC"), which is regulated by the Federal Aviation Administration ("FAA").

Due to ATXI's routing conflict with the VORTAC, ATXI asked the Commission to approve a new route for a portion of the Quincy to Meredosia segment of its Illinois Rivers Project in order to avoid the VORTAC. In Docket No. 15-0278, Staff recommended that the Commission approve an alternative route that would not utilize the easements across tracts ILRP\_QM\_AD\_003, ILRP\_QM\_AD\_033, and ILRP\_QM\_AD\_010, for which ATXI requests eminent domain authority in this proceeding. Staff asserts that the Commission's routing decision in Docket No. 15-0278 may mean that ATXI does not need the easements it identifies in this docket across these parcels. Further, Staff states that the owners of these three parcels informed ATXI that they would not negotiate until after the Commission's decision in Docket No. 15-0278, since the transmission line route that ATXI actually will use is still not known. The deadline for the Commission's decision in Docket No. 15-0278 is November 12, 2015.

Should the Commission approve ATXI's proposed route in 15-0278, Staff believes ATXI should again attempt to negotiate with the owners of these three parcels as the resolution of that Docket will resolve a primary reason negotiations have been unsuccessful up to this point. Staff notes that if those future negotiations are unsuccessful, these three parcels could be included in a future request from ATXI for eminent domain authority. Staff suggests there are an additional 24 parcels in Adams County along the Quincy to Meredosia segment of the planned transmission line for which ATXI has not obtained easements, some or all of which may require ATXI to file for eminent domain authority. Given these facts, it is Staff opinion that denial of eminent domain authority for these three parcels will not cause any significant delays to ATXI's in-service schedule.

For the remaining parcels at issue in this proceeding, Staff does not raise any concerns pertaining to the number of ATXI's contacts with landowners. With regard to the other factors to consider in a petition seeking eminent domain authority, Staff does not raise any concerns related to ATXI's explanation of its compensation offers, the reasonableness of the compensation offers, or ATXI's response to the non-financial concerns of landowners. Staff does not take a position on the usefulness of further negotiations. Staff does not object to the Commission granting eminent domain authority to ATXI for the remaining 15 parcels in this proceeding.

### **C. Kaiser Intervenors' Position**

Kaiser notes that Docket No. 15-0278 has opened the location of the transmission line across the Intervenors' properties to doubt, and it appears undisputed that Staff's

proposed route in Docket No. 15-0278 would eliminate the transmission line from the Speckhart property and relocate it on the Kaiser property. The Intervenor suggests that as the record currently stands, they are unable to reasonably negotiate the necessary terms and conditions of an easement, including the cost of the easement, when it is uncertain whether the transmission line and its accompanying request for eminent domain authority will impact their properties. The Intervenor suggests that ATXI would, with Commission approval, force a property owner to engage in negotiations for a transmission line easement that may not in fact be necessary or required on his land.

The Kaiser Intervenor notes that ATXI acknowledges that a route was proposed in Docket 15-0278 that, if approved, would alter the location of the transmission line as it relates to the Speckhart and Kaiser properties. ATXI suggests that negotiations should still proceed, however the Kaiser Intervenor believes that is difficult until they are aware what they are negotiating for. The Kaiser Intervenor notes that the law recognizes the uniqueness of land, as well as the importance of social order, citing *Schwinder v. Austin Bank of Chicago*, 809 N.E.2d 180 (1st Dist. 2004). The Kaiser Intervenor asserts that the location of a transmission line invariably dictates the course of negotiations on all of the terms of the easement, however, in the present docket, there is no certainty where the transmission line will be located on the Intervenor's properties.

The Kaiser Intervenor believes that ATXI also makes light of the commitment of time and resources that property owners must dedicate to the negotiation of transmission line easement. As the courts have noted, the owner in a private sale transaction may simply walk away from the process. In negotiations preliminary to a condemnation proceeding, however, an owner "does not have that same luxury. If the property owner cannot agree to compensation with the condemning authority he will incur the cost and expense of defending against a condemnation proceeding." *City of Naperville v. Old Second National Bank of Aurora*, 327 Ill. App. 3d 734, 741 (2002). The Kaiser Intervenor asserts that Section 5/8-509 of the Act is intended to protect property owners from companies like ATXI forcing them into eminent domain proceedings before a good faith negotiation can take place, however given the present circumstances, no reasonable person would require negotiations to have taken place.

Although ATXI suggests that the Commission should ignore the present uncertainties because the Kaiser Intervenor refused to negotiate with ATXI before Staff's route was proposed in Docket No. 15-0278, it appears that ATXI's argument misses the mark, as ATXI did not petition for eminent domain authority prior to filing Docket No. 15-0278. The Kaiser Intervenor believes ATXI has made negotiation of an easement impossible since April 10, 2015, the date Docket No. 15-0278 was filed, therefore the lack of negotiations is ATXI's fault, not the Intervenor.

The Kaiser Intervenor notes that they appealed the Commission's order in Docket No. 12-0598, and therefore refrained from negotiating with ATXI while that appeal was pending. They note that ATXI has now again petitioned the Commission to modify the approved route in Docket No. 12-0598, which modification impacts the Intervenor's properties. The Kaiser Intervenor notes that ATXI has petitioned the Commission for a re-route in Docket 15-0278 because of a fundamental flaw in the Hybrid Route developed

in Docket No. 12-0598, as the route is located too close to a VORTAC, and the FAA objected to the segment of the transmission line near the VORTAC.

The Kaiser Intervenors assert that ATXI has created the present circumstances, while blaming the Intervenors for not negotiating within them. The Kaiser Intervenors note that the Commission's decision in Docket No. 15-0278 is expected November 12, 2015, while a decision by the Illinois Supreme Court on the Kaiser Intervenors Petition for Leave to Appeal Docket No. 12-0598 is expected by the end of November.

The Kaiser Intervenors assert that they will be able to engage in meaningful, fruitful negotiations after Docket No 15-0278 is completed, and that to negotiate prior to the conclusion of that docket would have been premature, and potentially pointless. ATXI's petition for approval to proceed with eminent domain against the Kaiser Intervenors at this time is unreasonable, unnecessary and overly burdensome on the Intervenors and the Commission, and they therefore request that eminent domain authority be denied as to the Kaiser and Speckhart properties.

## **V. COMMISSION ANALYSIS AND CONCLUSION**

In evaluating the reasonableness of ATXI's efforts to acquire easements along the Quincy to Meredosia and Meredosia to Pawnee segments of the IRP, the Commission notes that there is no dispute as to 15 of the parcels involved in this proceeding, none of whose owners have intervened and objected to the reasonableness of ATXI's efforts. Therefore, in light of the testimony and exhibits provided by ATXI and Staff, the Commission finds reasonable ATXI's efforts relating to those 15 Unsigned Properties. Accordingly, ATXI should receive authority under Section 8-509 of the Act to acquire easements via eminent domain on the 15 properties which are unsigned and no intervention has been received.

There is a dispute however as to 3 parcels involved in this proceeding, ILRP\_QM\_AD\_003, ILRP\_QM\_AD\_033, which are owned by Intervenor Kaiser; and ILRP\_QM\_AD\_010, which is owned by Intervenor Speckhart.

Kaiser and Speckhart suggest that it is premature to begin negotiations with ATXI regarding any easement rights on their property, as they believe that it is still unsettled as to whether the IRP will impact their property, and where the IRP will be situated in relation to their property. Staff indicates it also believes that the Commission should withhold any grant of eminent domain authority to the Kaiser and Speckhart properties, suggesting that ATXI has failed to show that further negotiations would not be useful with regard to the three identified properties that lie in Adams County.

ATXI submits however, that it has attempted to negotiate regarding the Kaiser and Speckhart properties for months, however Kaiser and Speckhart have thus far refused to discuss the issue of an easement on their properties. While ATXI acknowledges that the Kaiser and Speckhart easement may be impacted by the Commission's decision in Docket No. 15-0278, ATXI has agreed that should the IRP be routed so as not to impact

the Kaiser or Speckhart properties it would not proceed with obtaining the easement or pursuing an exercise of eminent domain authority.

The Commission finds that ATXI has proceeded appropriately in this proceeding, and has satisfied the requirements set forth by the Commission for a request of eminent domain authority. The Commission finds that ATXI has attempted to negotiate with the Kaiser Intervenors, who have refused to engage in any negotiations for the reasons set forth earlier. The Commission however, believes that the evidence shows that there is little likelihood of further negotiations being successful. The Commission recognizes that ATXI has agreed to not proceed with any eminent domain request or attempt to obtain an easement regarding the Kaiser or Speckhart properties should the IRP not involve their properties, which the Commission believes should be self-evident to all involved. The Commission does not believe that it was reasonable for the Kaiser Intervenors to refuse to engage in any negotiations with ATXI prior to the filing of this proceeding, despite the pendency of an appeal of Docket No. 12-0598, or the filing of Docket No. 15-0278.

Accordingly, the Commission will grant ATXI eminent domain authority under Section 8-509 of the Act for all of the remaining Unsigned Properties. While it does not believe continued negotiations for the Unsigned Properties will be of further use, the Commission nevertheless encourages those involved to come to negotiated agreements because doing so is likely to be preferable to participating in proceedings before a circuit court.

In addition, ATXI requests confidential treatment for certain information filed in this proceeding and in particular for information pertaining to terms of negotiations conducted with landowners. The Commission finds that confidential treatment should be granted to this information under the terms set forth in the Terms Governing Protection of Confidential Information issued on October 26, 2015, for a period of two years from the entry of this Order.

## **VI. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the record herein, is of the opinion and finds that:

- (1) Ameren Transmission Company of Illinois is a public utility within the meaning of the Act;
- (2) the Commission has jurisdiction over Ameren Transmission Company of Illinois and the subject matter herein;
- (3) the recitals of fact and legal argument identified as the parties' respective positions in the prefatory portion of this Order accurately reflect the record in this proceeding;

- (4) the recitals of fact and conclusions of law reached in the Commission Conclusion are supported by the record and are hereby adopted as findings of fact and conclusions of law for purposes of this Order;
- (5) the Commission authorized Ameren Transmission Company of Illinois under Sections 8-406.1 and 8-503 of the Act to construct a new 345 kV electric transmission line along the route approved in Docket No. 12-0598;
- (6) Ameren Transmission Company of Illinois now seeks authority under Section 8-509 of the Act to acquire through eminent domain certain land rights on 18 parcels of land from landowners who are thus far unwilling to sell it an easement;
- (7) Ameren Transmission Company of Illinois has acted reasonably in its efforts to obtain the easements at issue in this proceeding; and
- (8) Ameren Transmission Company of Illinois should be granted authority to seek via eminent domain proceedings 150 feet wide easements, as well as temporary construction easements, for the purposes described in this Order on the properties identified in Appendix A and Appendix B hereto.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Ameren Transmission Company of Illinois is authorized under Section 8-509 of the Public Utilities Act to seek, in accordance with the Eminent Domain Act, the necessary land rights (including construction easements where necessary) on the properties identified in Appendix A and Appendix B hereto.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Illinois Administrative Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:  
BRIEFS ON EXCEPTIONS DUE:

November 12, 2015.  
November 16, 2015

J. Stephen Yoder,  
Administrative Law Judge